

13.
REMARKS

ON

THE PLEA OF INSANITY,

AND ON

THE MANAGEMENT

OF

CRIMINAL LUNATICS.

BY

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REMARKS
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&c. &c.

THAT some change is necessary in our present code of laws, as regards the plea of Insanity, and the treatment of what are called Criminal Lunatics, seems to be now universally admitted by all those whose attention has been directed to the subject; and as these form a large, important, and influential class, and as Lord Shaftesbury has declared his intention of bringing the matter before Parliament early in the ensuing session, there is good reason to hope that some remedy will be found for a system which certainly reflects no credit on our country, but inflicts a large amount of injustice without satisfying any portion of the community.

I am not about to advocate the cause of the really criminal; on the contrary, I believe that much mischief has resulted to society from the too frequent admission of the plea of insanity. I

totally repudiate the doctrine that an insane person is necessarily irresponsible. All who have had the opportunity of studying this malady know full well that, with comparatively few exceptions, insane persons are not only powerfully influenced, but materially controlled, by the same motives which influence and control those who are still mixing in the world, and who have never been suspected of any mental derangement. If patients are taught that certain acts are surely followed by certain unpleasant consequences to themselves, they do not indulge in those acts. If a patient knows that giving way to violent or mischievous conduct results in the deprivation of some indulgence, or separation from his companions, a motive is given him for controlling any such disposition or propensity, and as a rule this motive is sufficiently powerful to deter him. There are of course still many who, as far as human discrimination can determine, are quite unable to control these propensities or inclinations, even though their indulgence affords them no gratification; but these are the exceptions, and, as regards the plea of insanity, they offer no difficulty, inasmuch as their malady is too well marked to admit of a doubt as to their real condition.

Every benevolent mind would shrink with horror from the thought of adding to the misery of that awful affliction which, in the providence of God, is visited upon our race, and punishing the wretched

sufferer, already oppressed beyond human endurance, for the consequences of a malady over which he has had no control, which, humanly speaking, he has done nothing to deserve, and which, it may be, is the result of that curse under which we all labour — of having the sins of the fathers visited upon the children. But whilst we are tenderly alive to the frailties of our common nature, and feel it to be a christian obligation to shield from man's vengeance one already withering under the chastening hand of God, we yet, as good citizens, have a solemn duty to perform towards society, and our responsibility is immensely increased when, as members of a learned and honourable profession, we are called upon to assist, with our experience, in deciding whether or not the evidence adduced in defence of a criminal is sufficiently clear to justify the administrators of the law in departing from that course which is essentially necessary for the safety of society, and the protection of the lives and property of individuals.

So much difference of opinion exists as to what properly entitles an offender to acquittal on the plea of insanity, and such vague notions prevail, even among the intelligent classes of society, as to the nature of insanity, that a few words may not be considered altogether out of place in attempting to throw some light on this most interesting but most mysterious subject.

It must not be supposed, then, that insanity is a

specific disease which, though varying in its forms and in the circumstances under which it occurs, can be included within certain definite limits with such precision that the point where sanity ends and insanity begins can be always clearly indicated; or that it consists in any uniform set of symptoms to which all cases may be referred, and with which standard all may be compared; that its different varieties follow any regular order, and can be recognised with the same facility with which we detect the various corporeal maladies which we are called upon to treat: so far from this being really the case, it is well known to all who have paid any attention to the subject, that many cases occur where, notwithstanding the nicest discrimination and the most patient investigation, nothing but a doubtful opinion of the case can be expressed; so doubtful, indeed, that it not very unfrequently happens that two equally competent observers arrive at directly opposite conclusions, the one seeing no sufficient evidence of mental disturbance, the other being fully satisfied of its existence. It might be that this difficulty arose from the fact of the malady being limited to such symptoms as the patient was able, under the influence of a sufficiently powerful motive, to conceal; for it might happen that beyond the existence of a delusion, possibly of a most dangerous nature, there was nothing remarkable, either in the conduct or conversation of the individual, to excite suspicion;

and if, as will sometimes occur, the existence of this delusion is denied by the person entertaining it, there would be no means of arriving at a satisfactory decision. Again, there would be great difficulty in determining the existence of mental disturbance when this was manifested only by a series of extravagant acts, of which, however, a plausible explanation might be given, the value of which explanation could be properly estimated only by repeated opportunities of observing the daily habits of the individual under various circumstances.

I am not prepared to adopt the opinion of an able writer on insanity, that nobody is of perfectly sound mind; because it seems to me that, as far as anything human can be perfect, we must consider that mind perfect which has a due appreciation of all the events of which it has to take cognizance, and, by the order and regularity which it observes in responding to the impressions conveyed to it, exhibits such manifestations as by common consent would be expected to occur under such circumstances. But I am disposed to think that this doctrine of the mind's general imperfection is capable of wider application than we are disposed generally to accord to it; for in truth, to be consistent, we must admit that a comparatively trifling departure from the generally admitted standard of reasonable conduct is evidence of that want of control which is the necessary consequence of mental disturbance, and that, in fact, the mind is to a

certain degree unsound when the individual ceases to exercise due control over his actions. Undoubtedly, any departure from that degree of control which nature intended should be exercised over our passions, propensities, and actions, is *pro tanto* evidence of a certain deficiency of mental power, or, perhaps, rather departure from mental sanity. It is not until an individual has ceased to exercise this control to a certain considerable extent that he is considered insane and incapable of managing his affairs, or of pursuing that course which his own interest and the welfare of his family imperatively demand. If, then, there are cases where nothing short of omniscience can determine their true nature, inasmuch as no human being can divine the thoughts of another, can appreciate the effect produced on another's brain by the impressions conveyed to it, or can tell in what a very different light the same facts are viewed by different individuals, and cannot, therefore, in the case of one who asserts that he labours under a particular delusion, positively deny that such is the case, however strong and apparently well-founded may be his suspicion of deception, — if, I say, there is something so uncertain in the investigation of these cases, and we are driven to admit that no well-defined line separates the sane from the insane, it behoves us to proceed with especial caution in an inquiry starting from such uncertain premises.

But we must go on to consider what amount of mental disturbance really constitutes insanity.

It must be borne in mind that the word Insanity is, properly speaking, a relative term, signifying only a certain departure from the accustomed condition or natural manifestation of the human mind ; it does not express any positive condition which would be immediately, and without difficulty or hesitation, understood ; for, as has been already observed, two equally competent observers will often come to opposite conclusions on the same case, and, indeed, what would be received as proof of good judgment in one, would be considered evidence of insanity in another. The difference in position, education, and means, would make all the difference in estimating the conduct of an individual with a view to determine the question of his sanity. What in one person may be perfectly reasonable and judicious, may in another be altogether most unreasonable and imprudent ; whilst in a third, the very same act would be unhesitatingly admitted as undeniable evidence of some mental disturbance. For instance, a man of rank and wealth might spend large sums in the purchase of costly ornaments or highly prized works of art, and nobody could question his discretion in the matter ; another, only just able to provide his family with the means of living respectably, would, in gratifying the same tastes, be considered imprudent ; whereas, a mechanic, who in the same manner spent far

more than in the full realization of his most sanguine expectations he could hope to realize by the closest and most successful application to his work, would be accounted insane. Again, an individual whose position gave him influence in society, might exert himself in his neighbourhood to gain converts to some particular political views, and might spend much time in attracting public attention to the subject which interested him, assemble meetings, and perhaps at length determine to offer himself as a candidate for a seat in parliament for the sake of more effectually accomplishing his object; all this might happen without anybody suspecting that there was any other than a reasonable cause for the steps he had taken: but, if the same course were followed by one whose income depended entirely upon some occupation which required his constant attention, his family might think he would be more prudent to leave such questions for those who were more at liberty to attend to them; but, supposing some imperfectly educated shopman to neglect his duty to his employer, and spend his time in concocting some scheme which should give him a seat in the legislature, he would very naturally be considered insane, and such a case does actually now and then occur. Last year a grocer's apprentice was a patient in Bethlem Hospital, whose insanity consisted in an extravagant estimate of his own powers and capabilities. He left his master's house, and

wandered about endeavouring to convince his acquaintances and associates that he was peculiarly fitted to represent some constituency in parliament, and, though scarcely able to speak his own language grammatically, attempted to get together a public meeting to explain his views and satisfy the people of his ability to perform properly the duties of the station to which he aspired. Almost all that he did up to the time of his admission into the hospital, and for many weeks afterwards, might have been done by a young man of education and fortune without its being attributed to mental derangement; but the difference of position made that insane in him which might have been reasonable in another. Although there was no positive delusion, properly so called, and although he was stated to be neither dangerous to himself nor others, it can scarcely be doubted that his family were perfectly justified in placing him under the control of an asylum; for it is impossible to say to what lengths his erroneous estimate of himself might have led him, had it not been checked in time. The sequel proved the propriety of the course which had been adopted, while it suggested the regret that earlier steps had not been taken to control his random freaks, and so have afforded a better chance of his restoration to reason; but the habit of the mind had become too firmly established, his ideas became more and more extravagant, positive delusions began to be entertained, and at

length, at the expiration of a year, he was discharged uncured.

It now and then happens that the principal inducement which friends have to confine patients not otherwise troublesome, is the disposition they evince to make purchases altogether inconsistent with their position, beyond their means, and with a recklessness which contrasts strongly with their accustomed habits of prudence and discretion ; and though this propensity may be occasionally extravagant in the extreme, and induce the individual to give orders for costly articles which had never existed but in his own wild imagination, it may only amount to an imprudent estimate of his real requirements ; and, though the act itself might not furnish sufficient evidence of insanity, the subsequent conduct might remove any doubts that had existed as to the true nature of the case. A patient who was in Bethlem Hospital last year, had occasioned very great anxiety to his friends by the reckless orders which he gave for goods altogether out of proportion to the wants of his business, and, though they saw that ruin must be the inevitable consequence of his persisting in so unreasonable a course, they had no power to prevent it, for he would give such a plausible reason for these imprudent transactions, that nobody could, without further and more conclusive evidence, certify to his insanity ; but when, having possessed himself of these articles, he immediately proceeded to

dispose of them without any reference to their cost, and even gave them away without any equivalent whatever, it became obvious that he was neither able to conduct his business nor to take care of himself. While in the hospital this patient was flighty, restless, and mischievous, and protested against the injustice of confining him; but the simple removal from all sources of excitement and anxiety seemed all that was necessary to bring about his restoration, for in two months he left the hospital quite well, and fully admitted the propriety of his temporary seclusion.

Another question which presents itself is, what degree of exaggeration of a natural emotion may with propriety be considered as constituting insanity. An impression may be made through the medium of the external senses on the brain, and having produced its effect, may cease to operate, without leaving any indication of its ever having been made; but it may, by repetition, or by its original force, or by being made on a brain of peculiar susceptibility, make an impression which is more lasting, or it may be permanent. But, supposing an impression sufficiently strong to be made upon the mind calculated to excite particular manifestation of feeling and conduct, and the effect which might reasonably be expected is produced, while certain other ordinary manifestations are restrained, apparently in consequence of the temporarily increased action, this, within certain limits,

might happen, and we should scarcely be justified in saying that the mind was disturbed. An emotion of one kind enables us to disregard for a time an emotion of another kind; some unexpected pleasurable emotion, for example, overcomes for a time not only those of an opposite nature which have possessed the mind, but all the ordinary impressions, of whatever kind, and this is perfectly natural. In the same way, by some powerful odour or taste, the sense of smell or taste for less odorous or sapid particles may be for a time diminished; by gazing on a brilliant light, the eye becomes less able for a time to appreciate properly less powerful impressions; and very loud noise continued close to the ear will sometimes for a short interval prevent the perception of less distinct sound. If, however, these temporary impressions on the senses are prolonged to an undue degree, and the interference with their normal manifestations, which, while temporary, was quite consistent with health, is continued, these may be permanently damaged, or indeed in some cases altogether annihilated; and the same argument will, to some extent, apply to the mind. So long as the brain performs its accustomed office, receives the impressions conveyed to it from without, and originates such actions as might, in accordance with our previous experience, be expected to result from such impressions, we cannot consider it in fault, even to the extent of functional disturbance. A person

naturally sensitive, but hitherto of undoubted sanity, sustains a severe bereavement which deprives him of all he held dear on earth, and the natural grief occasioned by such an event continues to press so heavily on his crushed spirit, that he can no longer take interest in those pursuits which once delighted him : we cannot impute this very reasonable consequence to any mental disturbance ; on the contrary, it affords good evidence that the mind is in a healthy state, and, on receiving the external impression of grief, manifests, through the conduct and actions of the individual, such an appreciation of the true nature of that impression as we should expect from it if it had manifested pleasurable emotion on the receipt of impressions of a joyous nature. But natural and reasonable grief may be prolonged to an undue degree ; it may, in fact, become the habit of the mind, and then the difficulty presents itself of determining how far or how long this habit must continue to constitute disease, or, in other words, what degree and what continuance of grief really amounts to that form of insanity which is known as *melancholia*.

Again, a form of insanity fully recognised and described by the best writers on the subject, but generally repudiated by the lawyers, unquestionably exists, commonly known as Moral Insanity ; in which, without any delusion, there is a perversion of the natural conduct of the individual, with a loss of control over the actions, which nobody would

fail to recognise or hesitate to admit, if it were not urged, probably for the first time, as a reason why punishment for an offence should not be inflicted. To take a simple illustration of this form of insanity: a patient in Bethlem, who was for the most part quiet, orderly, and rational, had an irresistible propensity to tear her bed-clothes. She was fully aware that she was doing wrong, was always ashamed of it, and continually begged that I might not be told. When I attempted, as was frequently the case, to reason her out of such a mischievous propensity, and asked her why she persisted in it, she would endeavour to avoid the question; but, on being pressed for an answer, could only say, "I should not do it if I were not afflicted." We cannot but feel the truthfulness and simplicity of such a plea, nor can we doubt but that this unfortunate person was really irresponsible for her conduct, though fully capable of appreciating the difference between right and wrong, and therefore able to see the impropriety of her unreasonable acts.

The world, and especially those in it who are the subjects of certain habits which they cannot control, would be most unwilling to admit that these very habits were really evidence of a certain degree of mental infirmity. Can it be doubted that the mind of the habitual drunkard, of the licentious profligate, or the reckless gambler, is, to some extent, impaired? Can there be a question that the long-continued indulgence in such vicious

pursuits has ultimately weakened the power of control which the individual was once able to exert, and which might still have been sufficient to protect him from the consequences of unrestrained indulgence, if he had not systematically neglected its exercise? A great amount of moral and social good would result from placing some restriction on the liberty of such as in this way bring disgrace and ruin not only on themselves, but their families and connexions; but there will be an opportunity of returning to this subject, in considering the proper management of the various classes of insane delinquents. Again, some who are perfectly free from the vices just referred to, would be disposed to admit that, in the excess to which they are occasionally carried, they did indeed justify the suspicion that the mind of the individual had somewhat suffered, and that the systematic indulgence in such habits as must necessarily lead to ruin, disease, and death, could only be accounted for on the supposition of some deficiency in the proper controlling power, — in other words, of some positive mental disturbance.

But, to go a step further, and consider the case of some perfectly innocent peculiarity, which, although it only affects the individual, and in no way interferes with the welfare or comfort of another, is yet an admitted frailty, from the tyranny of which the object of it would gladly escape, but which, in spite of his utmost endeavours, he finds

it impossible to shake off. To take a very simple illustration, we may instance the habit, which is occasionally observed to continue through life, of persons destroying their finger-nails by constant nibbling, and thereby producing not only considerable personal inconvenience and pain ; but such an amount of disfigurement as would, if it were inflicted accidentally, be considered a great misfortune, particularly if the subject of it were young and fair, careful to improve, it may be, her great attractions, and yet unable to exert sufficient control over her actions to prevent these self-inflicted mutilations. It is not pretended that such persons are insane in the ordinary acceptation of the word ; but assuredly there must be something imperfect in their mental operations, however slight this may be, and however unworthy of consideration it may be esteemed ; there must be some degree of departure from the perfect standard of mental health to allow of such an irrational habit. I purposely adduce an instance, which, although it may be considered insignificant as an illustration, is yet one which will probably be familiar to most of my readers, though it may never have occurred to them to view it in this light. My object is, to show how difficult, I might say impossible, it is to define the limits of insanity, and how improper, therefore, to lay down any absolute rules by which to determine its existence in criminal cases. Every individual case must be decided on its own merits, independently of any general rules ;

for these must necessarily lead, if anything like consistency is attempted, to the punishment of some who ought to be acquitted, and the escape of others who ought to be punished.

Seeing, then, that it is absolutely impossible to establish any standard by which to judge of the different degrees of departure from mental health, inasmuch as the ever-varying circumstances of each individual exert such a material influence on his mental condition, and really make that insanity in one which is perfectly consistent with sanity in another; seeing, also, that there are as many different degrees of mental disturbance as there are peculiarities of constitution among individuals, and that this great principle, which should have guided all deliberations, and influenced every decision on the subject, has never been recognised, — we can scarcely wonder at the confusion that has existed, and the mistakes that have been made, in cases where the plea of insanity has been set up.

It cannot be denied that the attempt to prove the existence of insanity in the case of criminals who have incurred the penalty of death, has been too often made, and has too often succeeded. I do not hesitate to express my conviction, that many are now confined as criminal lunatics who have never been insane at all, and others who, if labouring under a certain amount of mental imperfection, were still perfectly able to exercise all the control which was necessary to prevent their committing

deliberate and heinous crimes. It becomes, therefore, a momentous question to consider how such an error has been committed, and how it may be avoided for the future. In the first place, I conceive that the humanity of the medical witnesses has induced them to be content with too little direct evidence of insanity; they have, in fact, allowed circumstantial evidence greater weight than it deserved, and now and then it has occurred that the accidental circumstance of some member of the family having been insane, has afforded the strongest evidence that was adduced of the insanity of the accused himself; and, with very little else to corroborate the opinion, excepting, perhaps, the enormity of the crime, he has been declared innocent on the ground of insanity, because between this and capital punishment there was no alternative: but if the offence had been something less grave, and the punishment anything short of death, such evidence would have been rejected as utterly insufficient. And yet why should the same individual be acquitted of murder on account of the presumed existence of such an amount of insanity as would not have saved him from the consequences of a minor offence? In the case of insanity we must suppose that in proportion to the aggravated nature of the crime must be the amount of mental disturbance, and that the same amount which might lead the individual into the commission of a trifling offence, would not be sufficient to impel

him to the highest crimes; for, be it remembered, that in all — at any rate with very few exceptions, and those such as must be obvious to the most casual observer, — a great amount of mental sanity, of intelligence, and therefore of responsibility, remains; and that therefore the acquittal on the ground of insanity should only be where there is some positive evidence that the offender committed the crime under the distinct influence of his malady. There are many degrees of mental imperfection which are not sufficient to purchase immunity for trifling offences, neither should they be admitted as a bar to punishment for those of a more aggravated nature. But in this argument I am supposing acquittal on the plea of insanity to be really an acquittal as far as punishment is concerned, and only involving that safe custody which the interests of society demand. This is something totally different from the present system, which commonly entails imprisonment for life amongst some of the most worthless of mankind, without any reference to the previous position in society of the unfortunate offender, or the degree of moral guilt which, under the circumstances, can be considered as properly attaching to his offence.

If I have appeared to reflect at all on the judgment of medical witnesses, it is not that I consider the fault to be theirs, but rather that of the system which commits such injustice that, according to the present state of the law, it can only be avoided by

adopting the opposite extreme. If, then, medical witnesses have gone too far in the direction of leniency, it is an error on the right side, for it is surely better that a dozen who are guilty should escape, than that one who is innocent should be punished. The lawyers have been as much at fault in the direction of severity; for, in their anxiety to vindicate the majesty of the law, they have lost sight of the fact, that where any amount of positive insanity is proved to exist there may be a great deal more which cannot be proved; and when it is borne in mind how great is the difficulty of rightly estimating the real amount of mental disturbance, we can scarcely wonder if the offender does not get all the benefit of those doubts which result from our inability to decide positively on his mental condition. It is unfortunate for the ends of justice that those more immediately concerned in determining the question of insanity in criminal cases have no common starting point, for the lawyers are not satisfied with evidence which is conclusive in the minds of the doctors. But further than this, medical witnesses have some fair ground of complaint, not only that their evidence is not received with the consideration to which it is entitled, but that they are sometimes forbidden to express the opinion which is the real object of their appearance in court. It is not contended that a physician is necessarily more competent to decide on the insanity of an individual than a lawyer, or any other

intelligent person who has paid the same attention to the subject; it is not for a moment supposed that others, and especially those who have devoted themselves to the severer study of the law, are not quite as capable, with the same experience, of arriving at a just conclusion; but it may be fairly argued, that one who has made the ever-varying forms of mental disturbance his constant study must be more competent to weigh the evidence for and against the reality of the alleged insanity than one who has never had such opportunities, and has been, therefore, without the means of learning practically in what insanity consists. I apprehend that the proper duty of the medical witness is to assist the court, with his experience and advice, to arrive at a just decision in the particular case; it is not to say what symptoms are most frequently observed in insane persons, or to deliver abstract opinions on the nature of insanity generally, but to deal with the individual case, to give the court reasons why he adopts the conclusion at which he has arrived,—to state, in fact, what are the particular circumstances which have led him to form his opinion of the case; in other words, to say why he thinks the accused sane or insane, as the case may be, and then leave the jury to determine whether the reasons are sufficiently satisfactory to induce them to adopt his opinion. If this course were adopted, it could not be said that the medical witness usurped the province of the jury; he did, in fact,

but assist in guiding them to a right decision, and, indeed, without this assistance, which could only be rendered by the medical witness, they would be left to form their own conclusions, with the great danger to the cause of humanity and justice of thinking more of the nature of the offence than of the probable irresponsibility of the accused. I would not be misunderstood as urging that the mere dictum of a physician, whatever his reputation or opportunities of forming an opinion, should be taken as conclusive evidence, unless he could give good grounds for the conclusion at which he had arrived; but surely he should be heard when he endeavours to explain these grounds, for it remains to the judge to point out to the jury the weak points of his evidence, the fallacies of his reasoning, and the unsoundness of his arguments.

It seems, then, to be an error in the practice of our criminal courts, to restrict the medical witness from a free discussion of the merits of the case. There is more danger to be apprehended from the want of experience on the part of those who have to determine the question, than from allowing the medical witness free scope in delivering his opinion, and the reasons for that opinion. How few of those in court during the trial of an alleged lunatic, whether on the bench, at the bar, or in the box, have ever had the opportunity of practically studying the various forms of mental disturbance, and have consequently any but the most general, frequently the most imperfect, notions on the

subject! A knowledge of insanity, such as is required to determine the question of its existence in criminal cases, cannot be acquired from books; it can only be obtained by patient and constant observation of numbers of insane persons under all varieties of circumstances, and this is what falls to the lot of few, excepting members of the medical profession. There is certainly no reason why this branch of study should be limited to one class of observers, but so it is; and whilst such a custom prevails, it is manifestly unwise to refuse to listen to advice from the only class really capable of affording it.

It is true that, with all the opportunities that the most fortunate and gifted inquirer may enjoy, insanity remains as one of the greatest mysteries we have to contemplate. But here, as in every other field of observation, there is always something to be gained by careful and thoughtful labour, and the study of insanity, therefore, may as properly enter into the course of education of the advocate as the physician; for if both were equally well informed on the subject, there would be little danger of committing those mistakes which, on the one hand, have spared the guilty, and, on the other, have sent to a violent death one who, it may be, has been impelled to the commission of a crime by a necessity which was the offspring of a mind diseased. It is not only that the lawyers differ with the doctors, and almost repudiate their assistance in determining a case of alleged insanity, but

they are scarcely consistent with themselves on these occasions, and not unfrequently adopt a practice and offer advice directly at variance with their own interpretation of the law. We see the same course which is condemned in one case, advocated in another, and the friends of one insane person blamed for not adopting proceedings which, when adopted in another, were strongly reprobated. The judges are not agreed amongst themselves what amount of insanity will justify the friends of a patient in depriving him of his liberty, and so avoiding the danger of his committing some crime in the absence of proper control. We can scarcely wonder at this confusion, when we find attempts made to lay down fixed rules by which to judge of a malady which varies with every variety of character, disposition, and circumstance.

It will be necessary to refer to some of the more remarkable, and some of the more recent trials, to show what is the present state of the law, and the practice of our criminal courts, in cases where the plea of insanity has been set up, or where the case has turned on the mental condition of an individual, and we cannot fail to be struck with the contradictory opinions entertained by different judges.

In the first place, we find one of the judges expressing himself thus, in addressing one of the Commissioners in Lunacy:—“It is my opinion that you ought to liberate every person who is not

dangerous to himself or to others. If the notion has got abroad that any person may be confined in a lunatic asylum or a mad-house who has any absurd or mad opinion upon any religious subject, and is safe and harmless upon every other topic, I altogether and entirely differ with such an opinion, and I desire to impress that opinion with as much force as I can in the hearing of one of the Commissioners." He further argued, that the fact of persons being perfectly consistent in respect of what were admitted to be delusions, and adhering to them, was evidence that such persons ought to be left to their own guidance, and that, consequently, however they might waste their means, ruin their prospects, and disgrace their family, their friends had no right to interfere with them ; and he even characterised such interference, only resorted to by the nearest relatives of an insane person for the purpose of protecting her from the influence of an individual who she believed to be " the Tabernacle in which God's Spirit now dwelt upon earth," as an " unjustifiable outrage."

According to this doctrine, the relatives of an unfortunate victim of insanity have no legal right to employ those means which, experience teaches, are best calculated to restore his reason ; they may not, without risking the consequences of a law-suit, place an insane person under the control of an asylum ; it matters not whether he believes himself to be endowed with Divine attributes, or deprived

of his just claim to a throne, — whether he asserts his right to the titles of one, or the property of another, — whether he declares that all his actions are and ought to be and will be guided by the instructions he receives through the medium of supernatural communications with heaven, — whether, under the influence of his delusions, he is rapidly exhausting his resources, and reducing his family to penury and want ; — so long only as his notions have no tendency to personal violence, he is to be accounted sufficiently sane to be left without control in his mad career.

But mark the result. The individual so long allowed to revel in the unrestrained indulgence of passions, propensities, and habits, unchecked by the controlling power of reason, and impelled by a force which had acquired strength by its continual exercise in the production of wild and reckless thoughts and actions, — hitherto, however, without any prejudice to the personal safety of himself or others, — suddenly and without motive directs an act of violence against an unoffending person who happens accidentally to cross his path ; however unmeaning and purposeless it may be, still it is no more so than many in which he has systematically indulged for months, or even years before ; but he has now rendered himself obnoxious to the laws of his country, which are most properly put in force to protect us from violence. He is arraigned before another judge, who speaks of him as “ unfor-

fortunate,"—gives his deliberate opinion in these words, "that the prisoner is an object of commiseration is quite clear, and that he should also have been taken better care of is equally true," — and then proceeds to tell the jury that the question for them to decide is, "whether they are satisfied that, at the time, he was suffering from a disease of the mind, which rendered him incapable of judging whether the act he committed was a right or a wrong act for him to do."

Now, in comparing the opinions of these two legal authorities, it is obvious that they are contradictory the one to the other. In the first case it seems that the law holds that an insane person ought not to be placed under control so long as his actions have no tendency to personal violence; in the other case a reproof to the friends is implied in the opinion expressed that the accused ought to "have been taken better care of," for not employing that control which in the other case was so strongly condemned; and, though commiserating his misfortune and fully admitting his insanity, the judge proceeds to mete out the *same measure* of punishment and degradation to "an unfortunate gentleman" that he would to a professed ruffian, whose last act of savage daring was only the sequel to a life of lawless violence or shameless infamy. There is no question but that the judge correctly expounded the law of the case; but we may fairly doubt the justice of that law which punishes a

man for his misfortune, especially when it is the result of circumstances over which he has had no control.

Undoubtedly, as has been already admitted, the plea of insanity has very often been set up and very often admitted on the most unsatisfactory evidence ; but if some lawless miscreants have in this way escaped their just punishment, we should, in our anxiety to guard against a repetition of such an abuse, be careful not to fall into an error at the opposite extreme, and attempt to make amends for the errors of the past by practising undue severity for the future. And yet we must suppose that some such feeling must have influenced the court in the conviction just referred to, which the reader has already doubtless recognised as the case of Lieut. Pates. If the offence had been any other than it was, we can hardly suppose that the jury would have found the prisoner guilty, when the existence of insanity was so fully proved and admitted ; but in their laudable zeal to protect the person of our Most Gracious Sovereign, they unquestionably failed to give due weight to the evidence which went to show that the unfortunate accused was not at the time he committed the offence responsible for his acts, by reason of mental infirmity of some considerable duration. Surely we are bound to make some effort to guard against such glaring inconsistency and such manifest injustice as that involved in the treatment of Lieut.

Pates, in comparison with that of Oxford. Surely the moral guilt of these two offenders was in no measure comparable; in the one case, a premeditated outrage by a vain, thoughtless, and reckless aspirant after notoriety, in the other an unpremeditated, unmeaning, and purposeless act, committed under the momentary influence of an insane impulse, by an unfortunate gentleman, who, doubtless, at any other moment would have been foremost to denounce such a cowardly attack, and to have defended with his life the beloved Sovereign whom he had formerly served. Although a special law was made to meet the case of those worthless and cowardly miscreants who dared, in the pursuit of an infamous notoriety, to raise their hands against the person of their Queen, it never could have been intended by the legislature to apply to the recognised victim of insanity. It is the first natural impulse in the breast of every Englishman to protect his Queen; and it is no less his anxious wish than his bounden duty, to guard against the possible recurrence of any outrage which has been once committed, calculated to alarm by the suddenness of the shock, even if attended with no more serious consequences to her safety and well-being. Excepting when such an offence has been committed under the influence of mental disturbance, there is no punishment short of death which the law can inflict too severe for such a base, unmanly, and detestable crime; but when there

has been clear evidence of such an amount of mental infirmity as had impelled the individual to the performance of numerous equally unreasonable and purposeless acts, and no other motive could by possibility be attributed to the unfortunate delinquent, surely punishment is out of place, and partakes too much of the nature of revenge. The most that the State can have the right to enforce is safe custody, for the purpose of preventing the repetition of an act so unlike an Englishman's under any circumstances, and especially under such a rule as that which is now the proud boast of his favoured country, and the admiration of the whole civilized world.

The cases just referred to, show how contradictory are the opinions held by different judges, as to the propriety of controlling insane persons. We shall find that in applying the test established in accordance with their interpretation of the law, there is the same uncertainty and inconsistency.

In reply to the question proposed to the judges by the House of Lords, it was laid down, as the established law of the land, that an offender, even under the influence of insane delusion, was still punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law.

Everybody who has had the opportunity of studying insanity, not from books, but as it actually occurs in the hospitals and asylums devoted

to the management and cure of the insane, knows full well that the legal test of insanity in criminal cases, viz, the capability, on the part of the accused, to judge of the nature of his offence, or, in other words, his knowledge of right and wrong with respect to the act with which he is charged, is in reality useless. Comparatively few, even of the inhabitants of asylums, if we except those whose minds have become almost a perfect blank, but know the difference between right and wrong, and are quite able to appreciate the consequences of their acts. Indeed, it has not unfrequently occurred to myself, when urging on the insane the exercise of more control over their conduct, to be told, it may be, with blasphemous oaths and fearful imprecations, by those who, in their sane state, were scrupulously decorous in their conduct and conversation, that they were mad, and, therefore, not responsible for their actions; tacitly admitting that they knew them to be wrong, but urging their insanity as a plea for immunity. But even these patients are capable of exercising a certain control over their mad freaks, and, when convinced that indulgence in them entails upon them certain irksome restrictions, they will not only desist, but apologize for the past. Others, again, will, from the first, express with great apparent sincerity, their regret for some act which they admit was very wrong, and which, when remonstrated with, they pledge themselves never to repeat; but scarcely

has the admonition ceased to sound in their ears, when they have proceeded to commit the very same offence: and this will happen again and again, though, on each occasion, the promise to refrain has been given with greater and greater earnestness, and apparent resolution to keep it.

I have already referred to the case of a patient who systematically indulged in mischievous propensities, well knowing at the time that they were wrong, but was yet unable, as she herself expressed it, to prevent them, or to give any other reason than this: — “I should not do it if I were not afflicted.” Such cases might be multiplied almost without limit, to show that an insane impulse to crime does occasionally exist where there has been no other motive, where the individual has hitherto borne an exemplary character, and yet, with every effort to control what was known to be wrong, the will has not been sufficiently powerful to avert the threatened danger.

A patient was very recently brought to Bethlem, of whose case I gathered the following particulars. She was the wife of a very respectable tradesman, who accompanied her to the hospital, and whom she herself described as an excellent husband. She further said that she had a very happy home, was blessed with good children, and, for her position in life, prosperous circumstances. Her malady appeared to depend entirely upon physical causes, and her conversation was perfectly rational.

Some months ago, having then been depressed for two months previously, she was going from one room to another, with a knife in her hand, and the idea suddenly, and for the first time, occurred to her, that she must do herself some injury. She immediately threw the knife away, and, from that time forward, avoided, as much as possible, the use of knives. About three months subsequently to this, while at supper with her husband, she got up, and said she could not bear to sit there with the knives on the table, for the evil spirit was tempting her still. Her husband had no suspicion that she was meditating suicide, and it was only when he found her wearing a black handkerchief round her neck, which was not her usual practice, that he was made aware, by a slight wound on her throat, that she had attempted her own destruction four days previously. She then told him that she had tried to cut her throat, but could not; and she now said that she knew it was very wrong, and very wicked, but that she could not help it, and must do it. Now supposing that, instead of herself, it had been one of her children whose destruction she had meditated, and supposing that she had actually accomplished her purpose, and committed murder, could it be contended that she was "still punishable according to the nature of the crime committed, because she knew, at the time of committing such crime, that she was acting contrary to law?" Surely the most rigid interpreter

of the law would feel that this was not a case in which such a doctrine could be upheld, and such severity practised; and yet, to be consistent, the punishment of death ought to be inflicted, — notwithstanding that there was no motive, and that the existence of insanity was clearly established, — because the wretched victim of this dread malady knew the difference between right and wrong.

This test of the capability to distinguish between right and wrong has so signally failed in practice, that no attempt has been made to apply it in some of the most remarkable trials that have occurred since it was proposed by the judges. Tuchet, in shooting a person he had never seen, and against whom he could have no feeling of animosity, knew perfectly well the consequences of his act, and, in fact, committed it for the express purpose of incurring the penalty of death. He had already attempted his own life; but, failing in his object, adopted this mode of accomplishing his own destruction, and, to escape from an existence which was a burden to him, was content to perish by an ignominious death.

The decision resulting from the deliberations of the judges, as to the state of the law in regard to the plea of insanity, had not long been declared, when a case occurred in which an opportunity was afforded of applying the test of the knowledge of right and wrong. A man who had been left alone for a few minutes with his four children, killed

them all, and soon after perpetrating the deed, clapped his hands and said, "Glory be to God: my sins are now pardoned, and I am sure of heaven!" The judge, in summing up the evidence, told the jury that they would have to decide whether the prisoner was in a sound or in an unsound state of mind at the time he committed the offence. "It was not merely for them to consider whether he knew right from wrong, but whether he was, at the time he committed the offence, deranged or not." Now, although this might not be strictly in accordance with the letter of the law, it yet appeared to put the case, as it affected the prisoner, in a way to be more fairly judged of by the jury, than if they had been called upon only to decide the question whether or not the accused was in such a state of mind as enabled him to distinguish right from wrong. The facts of the case were these: —

Wm. Frost, a tanner, had hitherto borne an exemplary character, and was a preacher in the Wesleyan Society. Some years previously to the offence with which he was now charged, some ill-disposed persons contrived to make him intoxicated, and then reproached him; his name was removed from the list of Wesleyan preachers, and the circumstance preyed greatly on his mind, so that it was supposed he never quite got over it. Some few years after this he had a severe attack of brain fever, during which he was delirious; but from

that time until about three months before the murder, there was nothing whatever to attract attention in his behaviour, and he pursued his ordinary occupation as a tanner with great industry and sobriety. About this time, however, his wife began to observe a change in his conduct: he became silent and reserved, fond of being alone, and neglected his work. Feeling anxious about his state of health, she urged him to leave home for a short time, in the hope that a change among his friends might have the effect of diverting his thoughts and rousing him from his increasing lethargy. It was at last determined that this course should be adopted, and on the morning of the murder his wife went out for the purpose of obtaining from a neighbour the means necessary to defray the expenses of his journey, leaving three of the children sitting at breakfast with him, and the infant in the cradle. She was not absent more than ten minutes, and on her return missed the children; the cradle also was empty, whilst her husband sat motionless and silent by the fire-side. She could get no information from him, and her call to the children was not answered; she was overcome with fear, screamed, and ultimately became insensible. The neighbours hearing her cries, came in, and it was then discovered that all the children were dead: two were found up-stairs, having been killed by blows on the head; the two others were found in another room, the elder one

killed in the same way, and the infant drowned in a pan of water. Frost remained sitting silently by the fire, and it was with some difficulty that any answer could be obtained from him ; he, however, admitted that he had killed the children, and acknowledged that a hammer which was found behind some shoes, with marks of blood upon it, and the handle of which had been recently washed, was the instrument with which he had committed the murder : he afterwards admitted, before the coroner, that he had washed the handle of the hammer a little.

One of the medical witnesses (Mr. Firth) concluded his evidence with this very sound remark :— “I do not think it conclusive, that, from his knowledge of right and wrong, he was able to control his actions ;” and the judge (Mr. Justice Williams), as has been already observed, in charging the jury, said : “It was not merely for them to consider whether he (the prisoner) knew right from wrong, but whether he was, at the time he committed the offence, deranged or not.”

There was no doubt on the part of any one concerned on the trial that he was insane, nor could there be any reasonable doubt but that he knew right from wrong ; the fact of his washing the handle of the hammer to remove the stains of blood, and afterwards concealing it behind some shoes, was good evidence that he wished to remove, as far as possible, all clue to discovery ; but his

mind was too much oppressed to enable him to carry out his purpose, and he sank down in his seat to await the fate which he felt he could not escape from.

The judge doubtless felt that the law, as expounded by the whole body of judges, could not be properly applied in such a case as this; that the circumstance of a criminal being able to distinguish between right and wrong, was not sufficient evidence that he was in a condition to be held responsible for his actions. And there can be little question but that in the majority of cases in which persons have been acquitted of offences on the ground of insanity, they knew perfectly that they were committing acts forbidden by law; they knew, also, the difference between right and wrong, but they acted under the influence of impressions more powerful than those which are sufficient, under ordinary circumstances, to deter from the commission of great crimes. They probably, in some cases, persuaded themselves that although the acts they meditated were wrong generally, they were justifiable in those particular cases, or under those peculiar circumstances, which they believed at the time to exist: but in many others they were clearly satisfied that they were wrong, and that, being contrary to law, they entailed that punishment which the law awarded to such offences; but yet they could not restrain the insane impulse which, contrary to their wish and inclination, drove them

to commit crimes from which their nature recoiled with horror. If the mind is sufficiently disturbed to create impressions which have no other foundation than the disordered working of the brain, who can say how powerful may be those impressions, or to what extent the individual is able or powerless to direct his acts, in opposition to such a controlling power ?

Several cases of the most conclusive nature are quoted in Taylor's excellent work on Medical Jurisprudence, to show how frequently great crimes have been committed, which the offender has evidently known were illegal ; amongst others is that of Dadd, which is sufficiently interesting and to the point, to merit some passing notice.

Some few years ago, at my request that he would write out for me a little history of his case, he very good-naturedly furnished me with a long and rambling account of the ideas that had, from time to time, occurred to him, and that still occupied his mind. The part in which he explained his views in reference to his crime, was summed up in a few lines. The following are his own words : — " On my return from travel, I was roused to a consideration of subjects which I had previously never dreamed of, or thought about, connected with self ; and I had such ideas that, had I spoken of them openly, I must, if answered in the world's fashion, have been told I was unreasonable. I concealed, of course, these secret admonitions.

I knew not whence they came, although I could not question their propriety, nor could I separate myself from what appeared my fate. My religious opinions varied and do vary from the vulgar; I was inclined to fall in with the views of the ancients, and to regard the substitution of modern ideas thereon as not for the better. These and the like, coupled with the idea of a descent from the Egyptian god Osiris, induced me to put a period to the existence of him whom I had always regarded as a parent, but whom the secret admonishings I had, counselled me was the author of the ruin of my race. I inveigled him, by false pretences, into Cobham Park, and slew him with a knife, with which I stabbed him, after having vainly endeavoured to cut his throat. Now the author of this act is unknown to me, although, as being the cat's-paw, I am held responsible. I do not extenuate my act; but as men are reasonable, or *capable of reason*, I think I have said enough to prove that I have no other concern than with an act of volition, blindly, it is true, but, as I thought, rightly accorded."

So well acquainted was Dadd with the consequences that would follow such an act, that some time before committing it he procured a passport, and made arrangements for his immediate escape to France, and this he actually accomplished as soon as he had killed his father.

It is manifest that this individual knew perfectly well, at the time of committing the crime, that he

was acting contrary to law, and therefore, according to the interpretation of the judges, was punishable according to the nature of the crime, although it was committed under the influence of insane delusion; but it is equally clear that the court by which the prisoner was tried felt it impossible to apply the legal test; it was obvious that he was not morally responsible, and it was properly determined that he was not legally so, notwithstanding that this determination was arrived at in direct opposition to what was laid down as the established law.

We are, then, inevitably driven to adopt one of two alternatives,—either the interpretation is incorrect, or the law is bad; but, when it is remembered what amount of legal learning was brought to bear upon the question, we can have no hesitation in deciding that it is the law which is defective, and not the interpreters who are in error.

As a consequence of the defects already alluded to, we find, amongst those who are confined as criminal lunatics, two distinct classes, the one sane, the other insane. Now, there must surely be something wrong in a scheme which admits of such inconsistency. It surely reflects somewhat upon our system that we continue to commit an error which our continental neighbours uniformly avoid, and that we continue to shut up the sane with the insane as if we had no means of distinguishing between them. We find nothing of this sort in

the continental asylums. In France, there is not a single sane individual in the criminal department of Bicêtre, nor, as I am informed by Dr. Ferrus, the distinguished government inspector of asylums and prisons, in any of the lunatic asylums in the country ; indeed, the law of France does not permit of the continued detention of a criminal lunatic after his recovery, whatever his offence may have been. This certainly seems to be carrying the principle too far in the opposite direction ; and even Dr. Ferrus, whose experience on the subject is second to none throughout Europe, is disposed to press on the legislature of France some modification of the law in this respect. But, while we avoid the errors of our neighbours, there is much, besides their beautiful manufactures and works of art, which we should do well to observe and study attentively ; and it is to be hoped that the impetus which has recently been given to intercommunication between nations hitherto comparatively little known to each other, will enable us not only to learn from them much that is useful, but to compare our respective customs and laws, and to adopt so much of what is good as would be suitable to our national habits, and the altered circumstances of the case as they affect particular countries and classes of mankind. A comparison of our own civil and criminal code with that of other nations, will enable us to take more enlightened views of a subject which has

scarcely kept pace with the improvements in other branches of science and learning.

Unquestionably the great defect of our criminal code is this, that different degrees of guilt are not recognised, and the magnitude of the defect is peculiarly felt in those cases where the plea of insanity is urged as an excuse for crime. We either allow this to the fullest extent, and nominally acquit the accused, or we reject it altogether, and impose the full penalty. What is the result? Why, that the guilty not unfrequently escape, while the innocent are punished, and our lunatic asylums are made to attest the inconsistency of our laws, which not only convert them into prisons, but present the strange anomaly of sane, and—in the eye of the present law—innocent, individuals being mixed up indiscriminately with the insane and convicted felons. If we were to recognise as a principle the different degrees of insanity, and as our neighbours do the different degrees of moral guilt, the difficulty would be at once removed; we should not be left to the alternative of the full punishment, or the absolute acquittal; the medical evidence would be received with more consideration than it at present obtains, for it would not be limited strictly to the question of sanity or insanity, but to the degree which had been really manifested by the accused; a less amount of responsibility would devolve upon the medical witness than at

present, and the court could therefore afford to receive his evidence with less jealousy and caution.

According to our present system, where there is no middle course between the two extremes, the fate of the accused is really in the hands of the medical witness, instead of being in the hands of the jury, as it ought to be. But the judges have seen and have endeavoured to remedy the defect by restraining the medical witness from entering fully into his views of the matter, lest he should prejudge the case too much in the minds of the jury; the effect of this must be to leave the jury without that information which it is impossible for them to get from any other source. We can scarcely wonder that any single individual should shrink from the appalling responsibility of declaring an alleged lunatic sane, when he knew that such an opinion was a death-warrant to the accused; nor can we wonder that the judges should endeavour to impose this responsibility on the jury.

If our law allowed the jury to declare a verdict of "GUILTY, WITH EXTENUATING CIRCUMSTANCES," in the first or second degree, all those doubtful cases which now attest the imperfection of our system would be properly dealt with; a degree of punishment or restriction would be imposed in exact proportion to the degree of moral guilt modified by the mental condition of the accused, and there would then be no objection to hearing all that the

medical witness could say for the defence, whilst he would have less hesitation in declaring the criminal sane, if the circumstances of the case tended to that conclusion; he would be relieved of all responsibility as to the fate of the accused, if there yet remained with the jury the power of averting the extreme sentence by appending to their verdict of guilty the declaration that there were extenuating circumstances; and it would be immaterial, as far as his personal responsibility was concerned, whether the jury did or did not find reason for making such addition to their verdict, so long as it was competent for them to adopt his opinion, and yet save the criminal from the extreme penalty on the ground of extenuating circumstances. These very circumstances, which we so much disregard, are of the greatest possible importance in enabling us to arrive at a just decision on the acts of another, and here our continental neighbours have evinced their better knowledge of human nature by giving them their due weight, and so tempering justice with mercy in a much more philosophical spirit than we ourselves have done. If, instead of acquitting offenders on the plea of insanity, as the only way, according to the existing law, of avoiding the alternative of capital punishment, a verdict of guilty, with extenuating circumstances, were recorded, a discretion would be left in the hands of the court to award any punishment short of death which the nature of

the crime and the mental condition of the accused seemed to justify. In a case of palpable insanity, acquittal on that ground would send the offender to the "State Asylum;" but there he should be considered a patient, and not a prisoner, and in the event of his full and perfect recovery he should be liberated; taking care, of course, that he had undergone a sufficient period of strict probation. A general exception to this rule might be necessary in those cases where the patient's malady had led to the sacrifice of life; but it is a question for the Crown, aided by competent advice, to determine in what cases where murder has been committed, even under the distinct influence of insanity, the murderer should be again allowed to mix with the world after his apparent recovery.

I am strongly of opinion that, as a rule, and excepting cases of infanticide, those who have actually committed murder should be under some control for the remainder of their lives, even though no symptoms of insanity remained. My impression is, that when an insane person is impelled to the perpetration of such a crime as murder, such an amount of mental disturbance exists as is not often entirely recovered from; and although the more marked symptoms of insanity may subside, and there may even be considerable intervals of reason, yet that the individual will be occasionally liable to a return of his malady in all its former intensity, bringing with it the same impulses and propensities

which characterized the original attack; or if he remains free from any well-marked symptoms of insanity, there is, at least, a degree of irritability, which not unfrequently ripens into excitement under trifling provocation. In the case of females, as the cause may be, and often is, of a passing nature, and frequently depends upon some constitutional disturbance, the malady may be as severe, but it is not so lasting, and complete recovery after the perpetration of some serious crime is more frequent.

Of 33 males now confined in Bethlem who have actually committed murder, — not including those where an unsuccessful attempt was made to perpetrate the same crime, — three only are reported as sane; two of these I am satisfied were not insane at the time they committed the murders. As regards one of them, it is stated that his legal advisers set up the plea of insanity against his will, for he declared himself innocent of murder, though he admitted that he killed a man in self-defence, and therefore reckoned upon acquittal. The other, a convicted felon, does not hesitate to avow that he committed the murder — for which he was acquitted on the ground of insanity — on an individual who had never done him anything but kindness, simply for the purpose of bringing about some change in his position as a convict, he being weary of such a life, and reckless as to the consequences of this additional crime, even if it involved the punishment of death; he was prepared for anything,

indeed, rather than endure the transportation to which he was condemned. The third, no doubt, was insane; and, though no symptoms of insanity now manifest themselves, a degree of morbid irritability remains, which would probably be soon roused to a dangerous degree if he were again exposed to the trials and anxieties of life.

Of the 15 females in Bethlem who have actually committed murder, five are reported sane. Two of them, at least, ought never to have been acquitted on the ground of insanity; the utmost that could properly have been said for them was, that there were extenuating circumstances. One other only manifests such a degree of mental depression as might be expected to occur in a sane person, who was capable of feeling remorse for such an awful crime.

The danger, then, to society would not be so great as might, at first sight, be apprehended, if the principle were admitted of liberating those who had committed even grave crimes under the distinct influence of insanity; for it is seen how very few, under such circumstances, ever perfectly recover. But there may, now and then, be an instance of perfect recovery, and in that case, excepting where murder has actually been committed, there is no just reason for still treating the offender as insane; indeed, it would be as unjust to him to do so as it would be to condemn to perpetual imprisonment an individual who, in the same insane

state, had attempted the same crime, but had fortunately been prevented accomplishing his object by the vigilance of friends. As far as guilt is concerned, these two are quite equal, and the chances of a recurrence of their malady are also equal; the danger to society, therefore, must be the same; but in the one case imprisonment is continued after recovery, in the other the State takes no cognizance of the attempt, and the patient is liberated without hesitation when the symptoms of his malady have subsided. In considering the propriety of releasing those who have committed some crime under the influence of insanity, those only are included whose malady was distinct and positive at the time of committing the offence. In those cases where there is still, after the most careful investigation, a doubt as to the reality of the insanity, or as to its being in sufficient force to render the offender quite irresponsible, the verdict should never be that of acquittal on the ground of insanity, but of "guilty, with extenuating circumstances," in one or more degrees. In this way, if an error of judgment is committed, it may be rectified, although it is true that, if once any sentence short of death is passed, it would be impossible to inflict capital punishment, even if it could be clearly proved that the insanity had been altogether assumed; but if, after all, the individual should turn out to be really insane, and there should appear good reason to believe, notwith-

standing the determination of the jury, that, at the time of committing his crime, he was really irresponsible, justice might still be done by sending him to the State Asylum.

This brings us to consider what becomes of those who are acquitted of various offences on the plea of insanity. It has already been observed that we find, amongst what are called criminal lunatics, two distinct classes, viz., sane and insane; but these latter are again made up of two very different description of persons: for instance, a certain proportion are insane convicts, and the remainder are those who have never committed any crime until, as a consequence of their mental malady, they have lost that control over their actions, the exercise of which had hitherto enabled them to occupy the position of respectable and useful members of society.

The name criminal lunatic is sufficiently inappropriate to any class, for it conveys a contradiction in terms, inasmuch as the law holds that the lunatic is not criminal, and that he should always be acquitted of whatever crime he may commit as a lunatic; and this very term lunatic, used alone, is scarcely less unfortunate than when used in conjunction with the word criminal. So very few insane persons appear to be at all influenced by the changes of the moon, even admitting to the fullest extent all that can be urged on the subject, that the propriety of retaining an expression which has

come to be used so generally and with so little reason, seems, at least, very questionable, as it necessarily conveys a most erroneous impression of the nature of that malady, which, at any rate, in the great majority of cases, is perfectly independent of any lunar influence, as far, at least, as any available means which we at present possess enable us to determine. The very word lunatic is associated, in the minds of most persons, with the idea of a wretched being, utterly reft of reason, torn by contending passions, and mad with frantic violence; and, if it were only to attempt the removal of some of these popular errors which so generally prevail as to the nature of insanity, we should do well to expunge from our vocabulary a word so well calculated to mislead, particularly as it has nothing to recommend it, and we have those which much better express the idea we wish to convey.

But to return from this digression. The term criminal lunatic is manifestly inappropriate, to whatever class applied; and for it I would suggest the adoption of expressions, suited to the different classes which are now, as I think, very improperly included in one. Convicts who become insane while undergoing their sentence of imprisonment or transportation, would be properly distinguished by the description "Insane Convicts," and those who have committed some offence under the influence of insanity, and have been acquitted on that ground, might be conveniently known as "State

Patients." If both are to occupy the same establishment, — and there seems no very good reason why they should not, — this might be called the "State Asylum;" but the two classes should most undoubtedly be perfectly distinct. Both are entitled to the benefit of such treatment as is best calculated to restore their reason; and though both are, for the time, patients, it must not be forgotten that one class only are convicts. These latter, according to the existing system, have little to complain of, excepting the want of active employment, for they are at least as well cared for in an asylum as in a prison, and in many respects they are much better off, and have many more comforts and means of enjoyment. But what is sufficient for the "Insane Convicts," is cruelly inappropriate for the "State Patients" whatever their crimes may have been; the State is no doubt called upon to protect society from a repetition of the outrages they have committed, and most properly enforces the safe custody of the delinquents; but it has no right to inflict punishment. The justice of the case, therefore, is met by providing these individuals with a maintenance in the "State Asylum," and, in the case of those who have occupied a superior position in society, and whose friends are able to contribute to their support, allowing them such additional comforts as they would have had if their malady had not gone on to its present intensity, and led them to

the commission of crime. There seems no reason why patients of this class should not be allowed, within certain limits, to live in the "State Asylum" according to their means, on somewhat the same principle as those confined for offences, not criminal, in the Queen's Prison. There is something quite inconsistent with our notions of humanity and justice, in a system which compels an unfortunate gentleman to associate with the very outcasts of society; and yet, if an individual, whatever his rank and station in the world, whatever his high moral character and intellectual attainment, should unhappily become the victim of insanity, and, in a furious paroxysm of maniacal excitement, inflict some fatal injury on another, the law recognises no real distinction between him and a convicted felon, whose whole career has been one of depravity, vice, and infamy. It cannot be supposed that the super-vention of insanity in the case of such a lawless out-cast can have done anything towards purifying a being so fallen; and yet one might almost suppose this to be the case, when we find him placed, in all respects, on an equal footing with those whose only crime has been the result of an affliction over which they have had no control, but which, it may be, they have exerted their utmost energy to avert.

There seems to be no reason why a "State Asylum" should not be so arranged as to provide separate accommodation for the very different classes which are now all included under one head,

and, at the same time that this separation is effected, every provision may be made for affording occupation, and the best means of restoration, to the individuals of each class. The two primary divisions, then, of a "State Asylum," should be for the two great classes of "State Patients" and "Insane Convicts;" but the principle of classification must not end here.

It will be remembered that, in the outset, I disclaimed the doctrine of insane persons being necessarily irresponsible. There are those who, with a certain amount of mental infirmity, are yet able to control their actions, and guard against the commission of crime; and I conceive that it is a doctrine likely to lead to disastrous consequences, which holds that any amount of mental disturbance may be admitted as an excuse for any amount of crime. That some allowance should invariably be made in awarding punishment, where any amount of insanity has been shown to exist, cannot, I think, be reasonably doubted; but that it should be allowed as sufficient reason why no punishment at all should be inflicted, I am not at all prepared to admit. An offence committed by an individual who had manifested some trifling symptoms of insanity, should receive a verdict of "guilty, with extenuating circumstances," and then it would be in the discretion of the court to determine whether the justice of the case would be best met by sending the offender to a prison or an asylum, and, if the

latter, then the necessity of some further classification in the "State Asylum" becomes obvious.

A disposition to recognise this principle has recently been manifested in some remarks which were reported in the Morning Papers as having fallen from Mr. Serjeant Adams, the assistant judge, in passing sentence on a prisoner who was convicted of the crime with which he had been charged. "The learned judge expressed himself as being satisfied with the verdict of guilty, but, at the same time, was equally convinced that the prisoner was a person of weak intellect, though not to such an extent as to render him irresponsible for his actions. In his opinion, his friends ought to adopt some measures by which he should be taken care of after he should have been released from prison, so as to prevent him from being again guilty of this offence. The crime which the prisoner had committed was of the most serious character; but, under the peculiar circumstances of the case, the sentence which otherwise would have fallen upon him would be somewhat mitigated." It is to be hoped that this principle of regulating the amount of punishment according to the degree of moral guilt and moral responsibility of the offender, will be, ere long, generally adopted.

Though the great majority of those now included in the one designation "Criminal Lunatics," may be arranged in the two divisions already proposed, there are some who scarcely, in strictness, belong

to either of these classes, and who yet must be kept in the "State Asylum." There must, then, in each of these divisions, be different departments, especially if the principle should ever be admitted of placing under the care of the State those whose mental infirmity takes the turn of habitual drunkenness, or other systematically unreasonable or vicious conduct, whereby the welfare, not only of the individuals themselves, but of their whole families, is endangered. The habit which, unhappily, so many acquire, of indulging in intoxicating liquors, cannot be considered disease when confined within moderate bounds; but the continued indulgence in such a habit increases its force, and what was at first perfectly within the control of the individual becomes, as it were, an almost resistless necessity; the will has no longer the power of controlling the actions of such a person, and though degradation and ruin for himself and family must obviously ensue if the habit is persisted in, and although he himself, perfectly aware that this result is inevitable, will resolve with all the energy of which he is capable to resist the temptation, he is powerless to avert the impending danger, but, with his eyes open, rushes upon his fate, and, by his own deliberate act, brings upon himself all the fearful consequences which he has struggled in vain to avoid. Still the deliberate ruin of his family is not considered sufficient evidence that his mind is unsound; yet there is

obviously such a loss of the power of control over his actions, as constitutes a certain departure from mental sanity, and this morbid condition is so real as to be not unfrequently transmitted from father to son, and actually becomes an hereditary disease.

Instances are sufficiently familiar, and several have occurred within my own personal knowledge, where the father having died, perhaps at an early age, from the effects of intemperance, has left a son to be brought up by those who have severely suffered from his excesses, and have, therefore, the strongest motive to prevent, if possible, a repetition of such misery ; every pains have been taken to enforce sobriety, and yet, notwithstanding all precautions, the habits of the father have become the habits of a son who had never seen him from infancy, and could not, therefore, have adopted them by imitation, whilst everything that anxiety could suggest has been uniformly done to encourage habits of temperance, but all to no purpose ; the seeds of the disease have begun to germinate ; a blind impulse has led the doomed individual, by successive and rapid stages, along the same course which was fatal to his father, and which, ere long, terminates in his own destruction. And this does not occur only among the lower orders, where it may be supposed that education has done little towards the cultivation of the mind and the government of the passions and propensities,—it is observed in those whose education and position in

society appeared to afford the best guarantee that their conduct would be under the guidance of reason.

Surely, then, we cannot hesitate to consider that state insanity, or, if this appears too strong a term, unsoundness of mind, in which the individual is avowedly unable to exercise that control over his conduct, which his own interests, and, indeed, the very continuance of his existence, require. A man cannot be said to be of perfectly sound mind, if he is unable to control an impulse to some voluntary act, which impulse is, perhaps, hereditary, but which, if obeyed, leads inevitably to his ruin and destruction. If, as a consequence of habitual drunkenness, he is subject to paroxysms of excitement, becomes mischievous, destroys his property, breaks his furniture, and perhaps threatens violence to his family, there is no longer a doubt of his insanity, and his medical attendant does not hesitate to grant a certificate to that effect: but these are only some of the symptoms of his malady; the tendency to commit the excesses which produce these symptoms is the real disease. The cessation, therefore, of mischievous and violent conduct is no proof that the patient is cured; we must remove the propensity to intemperance before we can pronounce him perfectly sane. But from the same cause a scarcely less serious degree of insanity may be produced, although the symptoms assume a less violent form; if the patient,

instead of a destructive propensity, suffers only such a perversion of his moral nature as leads him to excesses of the most degrading and revolting kind, involving reckless expenditure and waste, with all the misery and disgrace which follow in their train, his friends have no power to save him from himself, because this condition is not recognised as disease; but assuredly it is disease, and, although not attended with violence, it can scarcely be said that it is not fraught with danger to himself and others.

Any infringement on the liberty of the subject is naturally regarded with so much jealousy that a proposition having for its object the detention in an asylum of a person not actually insane in the ordinary acceptation of the word, will doubtless meet with decided opposition; but if the real nature of insanity were better understood, if its various degrees were generally recognised, and the altered conduct or irrational habits which afford evidence of its existence in a mitigated form were duly appreciated, there would be much less difficulty in dealing with those cases over which the present law gives the friends no authority to exercise control. Everybody who has seen much of insanity, knows the hopeless wretchedness which many families are made to endure, on account of the habitual drunkenness, and consequent irrational conduct, of some one member. It is true that these persons are frequently found in the asylums and

hospitals for the insane ; but it is only those who have committed some outrageous act, which has satisfied the medical attendant that he was justified in granting the required certificate ; and even in these cases little can be done towards effecting a permanent cure, because at present the friends have no power to continue the detention of the patient very long after the violent symptoms which led to his confinement have subsided. But, as already observed, the cessation of violent conduct is no proof whatever that the real disease is cured ; if the propensity to drunkenness is to be cured at all, it can only be by long continued and strictly enforced habits of temperance ; and this regimen can only be carried out where the individual is placed in such circumstances that it is impossible for him to obtain the means of indulgence.

I conceive, then, that the proper course to be adopted, is to give—perhaps to the Commissioners in Lunacy—the power, on the application of the friends of an habitual drunkard, to order his confinement in an asylum for a certain period not less than a year, and if, on his liberation at the expiration of the period, he should return to his old habits of intemperance, a further order should be given for a still longer period of probation and enforced temperance ; but if after this the real disease remains, that is to say, if there is the same inability to control the unfortunate propensity, the individual should then become the care of the

State, and be retained in the "State Asylum," in a position as nearly as possible resembling that in which he has been accustomed, and can still afford, to live. Of course this power should only be exercised where the condition of the patient threatened either the personal safety of his family or the ruin of their prospects; but such cases are unhappily by no means rare, and the amount of domestic misery they occasion can scarcely be estimated.

There is a practical inconvenience to which I have not as yet referred,—because it is not felt in Bethlem, where the criminal department is perfectly distinct from the main body of the hospital, and the patients are therefore entirely separate,—which is severely felt in the County Asylums, where there is no separate provision for criminals, who are consequently mixed indiscriminately with all the other patients, and not only suffer themselves from the annoyance occasioned to them by being continually exposed to the reproaches of their companions, many of whom take delight in taunting them with their crimes, but, on the other hand, increase the difficulty in the management of the asylum, by the greater restrictions necessarily imposed upon them for the purpose of safe custody being unavoidably shared by all the other patients with whom they are associated. The previous character and habits of many of those called criminal lunatics, also afford a very strong argument against the practice of exposing to their

contaminating influence those who have hitherto been strangers to vice and immorality. These and other objections have already been forcibly stated by several of the medical officers of the different County Asylums, I need not therefore dwell upon them here, but will content myself with adding my testimony to that already given to the magnitude of the evil, and the necessity of some revision of the law.

The length of these remarks has already been extended beyond what was originally contemplated, and while I hasten to conclude, lest the reader should be weary of the subject, I cannot forbear to say a very few words on the question of the propriety of capital punishment, which is really a principal cause of the difficulties that beset the plea of insanity. Whilst such unholy vengeance continues to be sanctioned by the laws of our country, we must occasionally incur the risk of inflicting death on a wretched victim, who, but for our ignorance in failing to recognise the characteristic symptoms of his malady, we should declare to be morally and legally innocent, and a more fitting object of our sympathy and pity than of our abhorrence and vengeance.

The authority supposed to be given by Scripture seems to me scarcely so absolute as its advocates suppose. We do not find that the law given by Moses — if indeed we can consider the passage “Whoso sheddeth man’s blood by man shall his blood be shed” in the light of a law — was uni-

versally observed ; and, considering how scrupulous were the Jews in enforcing with extraordinary exactitude all that they considered law, we may reasonably infer that even in those days the command was looked upon rather as permissive than obligatory. But in the earlier ages of the world we do not find that even murder was punished with death ; the first crime of this nature which is recorded in the sacred volume, although it brought down a curse on the criminal, did not entail the punishment of death. It did not consist with the intentions of Providence that another of those few then existing on the face of the earth should be swept from its surface, but a punishment consistent with the then state of the world was passed on the wretched criminal ; so, when the conduct of the disobedient Jews called for sterner justice, it was permitted as a protection to some, and a warning to others, that the life of the murderer should be forfeited. But we are as much entitled to refer to the sentence passed by the Almighty himself, as to that which was delivered through the medium of Israel's Lawgiver ; we have a right to argue, that what was permitted at a remote period of the world's history, when the state of society required such severity, was never intended to be binding on all succeeding ages ; what was thought necessary in the case of the Jews was not necessary in the time of our first parents. And if such a difference was made in dealing with the same crime at the two

separate epochs to which we have referred, we cannot hesitate to recognise the same principle of justice now in framing laws consistent with the present condition of the great human family. The extent to which the authority of Scripture may be brought properly to bear on the subject, is just so far as it permits a custom which the welfare of society at the time demands; without this authority we should have nothing to justify the cruel sacrifice of human life which we still tolerate, except the savage practice of barbarous ages continued through all states of society up to the present period of civilisation and enlightenment.

It is not disputed, then, that the State has authority to take the life of the murderer if the welfare of society requires it, and if no other punishment short of this can be devised which would equally deter from the dreadful crime of murder; but it should be well assured that this is the case, and it should be well considered whether the effect of a public execution does not tend to familiarise the spectators at such horrible exhibitions with scenes of violence and vengeance, whilst it helps to remove all feeling of the sanctity of human life when it is seen to be so heedlessly and legally destroyed.

The oft-repeated argument of the danger of sacrificing the innocent is, perhaps, more powerful than any that have been urged against the

infliction of capital punishment ; and it must not be forgotten that there are two classes of accused, who may both turn out to be legally and morally innocent : first, those who have not committed the offence at all, and next, those who have committed it under the influence of their mental malady. If, in the eye of the law, these two are equally held to be innocent, we are bound, in justice to the insane, to take care that they are not punished for their misfortune, but that they have the full benefit of that allowance which the law makes for their mental condition.

Briefly, in conclusion, to recapitulate the chief points of these remarks. It has been attempted to show that no well-defined line separates the sane from the insane ; that the different circumstances of individuals make that sanity in one which is not insanity in another ; that this sometimes consists of a simple exaggeration of what, in a minor degree, is perfectly natural, and that, therefore, a trifling amount of mental disturbance should not entirely exonerate an offender from the penal consequences of his crime, although, considering its mysterious nature, and the possibility of its being more intense than it appears, it should in all cases where it can be distinctly proved to exist, even in the most mitigated form, be admitted as a reason for not inflicting capital punishment. The verdict of “ guilty, with extenuating circumstances,” in one or

more degrees, — which extenuating circumstances would include any amount, however trifling, of mental infirmity, — leaves a power to the court of sending the offender to a prison, or to one or other department of the State Asylum, according to the amount of moral guilt and moral responsibility which appeared to belong to him.

Criminal lunatics, improperly so called, ought to be divided into distinct classes, for instance, Insane Convicts and State Patients, there being an intermediate class composed of those who have committed offences while labouring under so trifling an amount of mental disturbance, as not to entitle them to be considered irresponsible, and yet offences not sufficiently grave to merit confinement in a prison. All classes of what are called criminal lunatics have a right to the best means of treatment, and the adoption of such arrangements as afford them the best prospect of restoration to reason; but, in rendering them this act of justice, there is no necessity to huddle together all the very different classes without any regard to their previous position in society, the nature of their offence, the degree of moral guilt properly attaching to them, or the amount of mental disturbance under which they labour.

The law, as interpreted by the judges, viz., that an offender, even under the influence of insane delusion, was still punishable according to the

nature of the crime committed, if he knew at the time of committing such crime, that he was acting contrary to law, has been shown to be totally inapplicable, and, as a rule, has not been acted upon ; for it has been obvious, in many cases, that the accused was morally irresponsible, by reason of mental infirmity, though still sufficiently rational to know that he was acting contrary to law. And the same observation will apply to the great majority of insane persons, who are continually impelled to the commission of various unreasonable, mischievous, and violent acts, although perfectly conscious that they are doing wrong.

The principle, then, of recognising and recording in the verdict of the jury, the extenuating circumstances which so much influence the degree of moral guilt of the accused, and which ought, therefore, to influence the amount of restriction or punishment awarded, and the arrangement in the State Asylum for the different classes now indiscriminately associated together, would do much towards remedying the defects of our present system, and perhaps restore to reason and happiness many, whose first and only offence has resulted from accumulated sorrows, which have caused their cup of bitterness to overflow, and subverted for a time that most noble attribute of our common nature, by which Providence has been pleased to distinguish us from all created things.

As already said, my object has not been to advocate the cause of the really criminal: but there are those among what we call criminal lunatics, deserving of our warmest sympathy; and if these should meet with that consideration, not to say justice, which has never yet been accorded to them, my object will be accomplished, and it will, indeed, be a source of lasting satisfaction to me, to have promoted, in however trifling a degree, this much-desired end.

THE END.

